

"of any person for any medical treatment of the pregnant woman or her unborn child or of any woman with respect to her unborn child." So it does not apply to abortion, period. The act could not be more clear in exempting abortion.

Moreover, there is nothing in *Roe v. Wade* that prevents Congress from giving legal recognition to the lives of unborn children outside the parameters of the right of abortion marked off in that case. In establishing a woman's right to terminate her pregnancy, the *Roe* court explicitly stated that it was not resolving "the difficult question of when life begins," because "the judiciary, at this point in the development of man's knowledge, is not in a position to speculate as to the answer." That is what the Court said.

What the court held was that the government could not override the rights of the pregnant woman to choose to terminate her pregnancy by adopting one theory of when life begins. The Supreme Court explicitly confirmed this understanding of *Roe* in *Webster v. Reproductive Health Services*. That was a 1989 case.

Courts addressing the constitutionality of State laws that punish killing or injuring unborn children have recognized the lack of merit in the argument that such laws violate *Roe* and as a result have consistently upheld those State laws. For example, in *Smith v. Newsome*, which was decided in 1987, the United States Court of Appeals for the 11th Circuit held that *Roe* was immaterial to whether a State can prohibit the destruction of a fetus by a third party.

The Minnesota Supreme Court echoed that sentiment in 1990 in the case of *State v. Merrill*, holding that *Roe v. Wade* protects the woman's right of choice. It does not protect, much less confer on an assailant, a third-party unilateral right to destroy the fetus.

In 1994, the California Supreme Court held in *People v. Davis* that the *Roe v. Wade* principles are inapplicable to a statute that criminalizes the killing of a fetus without the mother's consent. In *State v. Coleman*, a 1997 case, the Ohio court, my State, the Court of Appeals stated, "*Roe* protects a woman's constitutional right. It does not protect a third-party's unilateral destruction of a fetus."

Opponents of this legislation have also argued that the use of the term "unborn child" is "designed to inflame." They contend that the use of this term may, in the words of those dissenting from the Committee on the Judiciary report, result in a major collision between the rights of the mother and the rights of the unborn.

This objection reflects nothing more than the semantical preferences of the most radical abortion advocates. It is based upon an apparent lack of knowledge of the widespread use of the term "unborn child" in the decisions of the United States Supreme Court and the

United States Courts of Appeals, in State statutes and in State court decisions, and even in the legal writings of abortion advocates themselves.

The use of the term "unborn child" by the Supreme Court can be illustrated by reference to *Roe v. Wade* itself, in which Justice Blackmon used the term "unborn children" as synonymous with "fetuses." Justice Blackmon also used the term "unborn child" in *Doe v. Bolton*, the companion case to *Roe*, in which the court struck down Georgia's abortion statute.

Subsequent Supreme Court decisions have also used the term "unborn child" as synonymous with fetus. These cases include *City of Akron v. Akron Center for Reproductive Health*, decided back in 1983; *Webster v. Reproductive Health Services*, decided in 1989; and *International Union v. Johnson Controls*, decided in 1991.

There are so many decisions by the United States Courts of Appeal using the term "unborn child" that it would be too time consuming to go through them all.

There are also at least 19 State criminal statutes similar to H.R. 503 that currently use the term "unborn child" to refer to a fetus, and these statutes have been consistently upheld by the courts.

Even abortion advocates such as Catharine MacKinnon have used the term "unborn child" as synonymous with the term "fetus." In an article that was published in the *Yale Law Journal* entitled "Reflections on Sex Equality Under the Law," Professor MacKinnon conceded that a "fetus is a human form of life" that is "alive." In her defense of abortion, Professor MacKinnon expressed her view that "many women have abortions as a desperate act of love for their unborn children."

Finally, opponents of H.R. 503 have argued that the bill lacks the necessary means requirement for a valid criminal law and is therefore unconstitutional. This argument reflects a lack of understanding of H.R. 503 and the well-established doctrine of transferred intent in the criminal law.

Under H.R. 503, an individual may be guilty of an offense against an unborn child only if he has committed an act of violence with criminal intent upon a pregnant woman, thereby injuring or killing her unborn child. Relying upon the doctrine of transferred intent, H.R. 503 considers the criminal intent directed toward the pregnant woman to have also been directed toward the unborn child.

The transferred intent doctrine was recognized in England as early as 1576 and was adopted by the American courts during the early days of the Republic. A well-known criminal law commentator describes the application of the doctrine to the crime of murder in language that is remarkably similar to the language and operation of this legislation as follows: "Under the common-law doctrine of transferred intent,

a defendant who intends to kill one person but instead kills a bystander, is deemed the author of whatever kind of homicide would have been committed had he killed the intended victim," which is essentially what we have under this legislation.

Mr. Speaker, it is clear that the legal challenges to this bill cannot withstand serious scrutiny. It is clear that this law does not in any way impact abortion. It is especially clear that the opposition of the bill, in fact, stems from an objection to the very concept of unborn children. The opponents insist that a concept that is a well-recognized one in the law is somehow dangerous and subversive. These arguments should be soundly rejected. The only people who have anything to fear from this bill are the criminals who engage in violent acts against women and the unborn children that they are carrying.

So, again, let me remind my colleagues of what the true question is before us. Do you believe that a violent criminal who kills or injures an unborn child, a child who is loved and wanted by a mother and usually the father, should face an additional offense and punishment for their acts? I believe that the American people would answer that question with a resounding yes, and I hope the House would do the same today.

I thank the gentleman from South Carolina (Mr. GRAHAM) for his leadership on this issue. I also thank the gentleman from Wisconsin (Mr. SENSENBRENNER), chairman of the Committee on the Judiciary, for his leadership.

I urge Members to vote in favor of the Unborn Victims of Violence Act.

Mr. CONYERS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I am delighted to hear from the gentleman from Ohio (Mr. CHABOT), the subcommittee chairman. I would like him to know that all of us on our side and those that support the substitute believe strongly that victims of violence should be punished; the victims, both the mother and the unborn infant, the unborn victim. Okay. We all believe that. We do not have a different view on that. Okay.

The second thing that you need to know is that, if this bill does not deal with abortion, which I will go into later, why is it coming out of the Subcommittee on the Constitution instead of the Subcommittee on Crime?

Mr. Speaker, I yield to the gentleman from Ohio (Mr. CHABOT).

Mr. CHABOT. Mr. Speaker, I thank the gentleman for yielding to me. It is because the Subcommittee on the Constitution has jurisdiction over this particular issue, issues of privacy, issues of civil rights, a whole range of issues.

Mr. CONYERS. Mr. Speaker, this is a civil rights bill?

Mr. CHABOT. Pardon me?

Mr. CONYERS. The gentleman from Ohio said this is a civil rights bill?

Mr. CHABOT. Mr. Speaker, I am saying that is one among many of the